THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.16795 OF 1998

DATED: 18-04-2007

Between:

D.S.S. Appa Rao and others

.. Petitioners

and

The Managing Director, Anakapalli Cooperative Sugars Limited, Thummapala, Anakapalli, Visakhapatnam District and others

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.16795 OF 1998

ORDER:

This writ petition is filed seeking a mandamus directing the respondents to recall the seasonal permanent employees on the basis of trade seniority and suitability to work during the off-season.

The case of the petitioners is that they are all seasonal employees in the 1st respondent Sugar Factory. During the off-season, as per the understanding, dated 28.04.1981, between the union and the management, the seasonal employees are being engaged on regular wages on the basis of trade seniority. While so, without knowledge of the petitioners, the union and management arrived at a settlement, on 21.08.1997, that the seasonal employees, who were being engaged during the off-season, have to be engaged on the basis of overall seniority and subject to suitability to work. The petitioners allege that the same is not permissible and the trade seniority must be taken into consideration for the purpose of engaging the seasonal employees during the off-season as per the previous understanding between the union and management.

In the counter filed by the 1st respondent, it is categorically asserted that the management is strictly following the terms of Memorandum of Settlement, dated 21.08.1997, and availing the services of the seasonal employees, against approved indents, during the off-season with effect from 24.09.1997. There is no deviation to any of the conditions of the Memorandum of Settlement executed. The

seasonal workmen are also attending to the works, which are to be discharged during the off-season period, and for the purpose of which the management approved the required indents to various departments. In other words, the management has been engaging the required seasonal workmen strictly on overall seniority basis (reckoning the total service of each seasonal employee) as against the available approved indents only. The engaged seasonal workmen are also discharging the works entrusted to them, irrespective of nature of work, which are mostly connected to cleaning, overhauling of machinery and unskilled in nature. This practice is imperative and unavoidable while taking up off seasonal overhauling works, in view of the Memorandum of Settlement dated 21.08.1997. As such, the dispute now raised by the petitioners is not in accordance with the terms of the said Memorandum of Settlement.

There is no necessity of going into all the details.

It is suffice to notice the relevant clause No.8 of the Memorandum of Settlement, dated 21.08.1997, which reads as under:

> "The Management has agreed to recall the seasonal employees on regular wages during off- season periods taking into account the overall seniority of seasonal workers and subject to suitability to work and requirement. The Management has also agreed to take the seasonal employees @ 50% and the balance 50% from the daily wage workers basing on the seniority and as against the approved indents raised during the off-season periods."

A reading of the above would clearly indicate that as against the approved indents raised during the off-season, the management has to recall the seasonal employees @ 50% taking into account the overall seniority and subject to suitability to work and requirement, and the

remaining 50% from the daily wage workers basing on the seniority. Thus, the petitioners are not entitled to the relief prayed for in this writ petition, which is contrary to the above said Memorandum of Settlement. Further, it is categorically asserted by the respondents that the works entrusted to the seasonal workmen are mostly unskilled in nature. Hence, it cannot be said that trade seniority shall be taken into consideration. The writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

C.V. RAMULU, J

18th April, 2007.
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